

Exemption 7

*Law Enforcement
Records*

Exemption 7

- *5 U.S.C. § 552(b)(7) protects information found in “records compiled for law enforcement purposes,” the disclosure of which would result in harm*
- *There are six sub-parts to Exemption 7, each of which addresses a specific harm in release*

Exemption 7

- *Threshold: “records or information compiled for law enforcement purposes”*
- *Recompilations of information*
- *“Law enforcement” under the FOIA--civil, criminal, administrative, regulatory;*
- *Mixed function agencies & Exemption 7D;*
- *After you determine if Exemption 7 applies, still need to identify specific harm in release*

The Exemption 7 Threshold

- *Records or information*
- *Compiled for*
- *Law enforcement purposes*

Threshold Much Broader than Just Criminal Law

- *Civil, criminal, administrative, regulatory*
- *Personnel investigations involving specific allegations of misconduct*
- *National security/terrorism investigations*
- *Every agency has some law enforcement mission*
- *The records must have been “compiled for law enforcement purposes.”*
- *Does not mean originally created for law enforcement purposes—recompilation concept*

Exemption 7

- *Six subparts allow for the withholding of information compiled for law enforcement purposes on the basis of the potential harm resulting from release*
- *Must be able to identify what law is sought to be enforced or the purpose of the compilation of records*

Exemption 7 Subparts

- (b)(7)(A): *could interfere with pending or prospective enforcement proceedings:*
- (b)(7)(B): *would deprive an individual of the right to a fair trial*
- (b)(7)(C): *could reasonably be expected to constitute an unwarranted invasion of personal privacy*
- (b)(7)(D): *could reasonably be expected to disclose identity of confidential source . . . or information provided by source*

Exemption 7 Subparts

- *(b)(7)(E): would reveal techniques or procedures for law enforcement investigations or guidelines if could risk circumvention of law*
- *(b)(7)(F): could reasonably be expected to endanger life or physical safety of any individual*

(b)(7)(A)

- *Exemption 7(A) allows agencies to withhold information compiled for law enforcement purposes if disclosure “could reasonably be expected to interfere with enforcement proceedings.” 5 U.S.C. §552(b)(7)(A).*
- *Protects information concerning pending or prospective law enforcement proceedings, the disclosure of which “could reasonably be expected” to interfere with that proceeding.*

(b)(7)(A)

- “*Proceeding*” includes law enforcement investigations, prosecutions, and administrative and regulatory proceedings (of a law enforcement nature)
- Applies to federal law enforcement proceedings, and state and foreign law enforcement proceedings
- This subpart is temporal in nature--an investigation/case must be open, pending or prospective

(b)(7)(A)

- *May be used when a suspect is at large, a crime remains unsolved, or there is a concrete chance of future proceedings*
- *The temporal nature of this subpart does NOT mean that when the reason for the exemption no longer exists, all of the information must be disclosed; other exemptions may apply to withhold exempt information*

(b)(7)(A)

- *Must articulate harm in release*
- *Public source documents should be released*

(b)(7)(B)

- Protects information the disclosure of which would deprive an individual of the right to a fair trial or impartial adjudication.
- Flip-side of (b)(7)(A); protects the litigant's interests, rather than the government's interests, from pretrial publicity
- Rarely, if ever, used

(b)(7)(C)

- *Protects records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy*
- *Covered in Mr. Hogan's class*

(b)(7)(D)

- *Protects the identities of confidential sources AND in the case of a criminal investigation conducted by a criminal law enforcement authority OR a lawful national security intelligence investigation, all information provided by those sources.*
- *Applies in criminal and civil matters*
- *Criminal law enforcement agencies vs. “mixed function” agencies*

(b)(7)(D)

- Who is a source?
- A person, state, local or foreign agency or authority, or any private institution, which furnished information on a confidential basis
- No presumption of confidentiality with regard to sources
- What is confidential?
- The government received information with the understanding that it would not be disclosed except to the extent necessary for law enforcement

(b)(7)(D)

- *The exemption applies even if:*
- *The identity is known;*
- *The source is anonymous;*
- *The source is dead;*
- *The source has testified;*
- *The source may be called to testify*

(b)(7)(E)

- *Protects information if disclosure WOULD reveal techniques or procedures for law enforcement investigations or prosecutions or guidelines for such, if disclosure of the guidelines could reasonably be expected to risk circumvention of the law.*
- *Two parts: Techniques and procedures: no risk of circumvention required*
- *Guidelines/manuals*

(b)(7)(E)

- *Does not apply to routine or well-known techniques, but may be able to protect the details of the technique*
- *Can use Exemption 2 (high) with (b)(7)(E)*
- *Law enforcement guidelines/manuals: remember to segregate non-exempt information*

(b)(7)(F)

- *Protects law enforcement-related information if disclosure could reasonably be expected to endanger the life or physical safety of ANY individual;*
- *Must be some connection between the release of the information and the harm*
- *Records or information compiled for law enforcement purposes*
- *“endanger life or physical safety of any individual”*

(b)(7)(F)

- *No balancing test required*
- *Show only a reasonable likelihood*
- *Show nexus*

Special “Vaughning” Problems

- (b)(7)(A)
- *State that all categories of information which could not reasonably be expected to interfere with law enforcement proceedings have been disclosed*
- *Describe the information withheld in functional categories*
- *Explain how disclosure of each function category could reasonably be expected to cause an identifiable harm*

Special “Vaughning” Problems

- (b)(7)(D)
- *If not a criminal/national security investigation, state that only information that could reasonably be expected to identify the confidential source has been withheld*
- *If a criminal/national security investigation, describe investigation without revealing exempt information*

Special “Vaughning” Problems

- (b)(7)(D)
- *State whether the confidential source was given an express or implied promise of confidentiality*
- *If dealing with implied promise of confidentiality, state the circumstances giving rise to the implied promise*